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Dear Ms. Avalos:

Thank you for providing this opportunity to comment upon the Department's proposed emergency rule implementing the *Spain* and *Batey* cases. Please recognize that I make these comments in good faith and that I am operating within the constraints of limited time and resources given the short turnaround time for comments. My hope is to articulate the interests of workers in Washington who must navigate the unemployment benefits system.

Before I provide section by section comments on the proposed emergency rule, an initial comment is in order. The Issue Brief concerning the proposed rule states that "the emergency rule is an attempt to remain consistent with the court decision using law prior to the ESSB 6097 as a model." It appears that the Department's goal is to issue a rule that is consistent with regulations and judicial opinions that were in effect immediately prior to the enactment of ESSB 6097.

That is a misguided effort, because it ignores the fact that ESSB 6097 deleted what is now RCW 50.20.050 (1)(c), a provision of the statute that limited good cause to work-related factors. By deleting RCW 50.20.050(1)(c), the legislature has returned the statute to one in which good cause can be based on personal factors. Thus, as to that point, the state of the law is now consistent with the pre-1982 statute and with the decision in *Bale vs. ESD,* 63 Wn. 2d 83, 385 P. 2d 545 (1963). In addition, by deleting RCW 50.20.050 (1)(c), the legislature has removed the basis for limiting good cause to a "substantial involuntary deterioration of the work factor".

Sections of Proposed Rule	Comments
WAC 192-150-170 Meaning of Good Cause—RCW 50.20.050(2). (1) and (1) (a) **General.**	Substantively no objections. The structure of the statute would be more consistent if the introductory words "due to" in Subsection (1) (a) (ii) were deleted, or "leaving due to" was inserted at the beginning of the subsection and in (v) - (ix).
(b) **Other factors constituting good cause—RCW 50.20.050(2)(a).** In addition to the factors above, the department may also determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050(2)(b). (i) For separations under subsections (ii) and (iv) below, all of the following conditions must be met to establish good cause for voluntarily leaving work: (A) You left work primarily for reasons connected with your employment; and (B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and (C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.	(i)(A)(B) As noted in my introductory comments, the limitation in provision in (b)(i)(A)(B) to "reasons connected with your employment" and "work-connected reasons" is no longer justified by the statute, so these phrases should be deleted. The *Spain* case explicitly cited *Ayers v. ESD* and *In re Bale*. Both of these cases found that "compelling personal reasons" were sufficient "good cause" under the voluntary quit provisions. The Supreme Court's citation to those cases indicates that the cases are still "good law." Those cases involved spousal transfers, but their reasoning applies more broadly. (C) There is no statutory justification for this exhaustion requirement. An exhaustion requirement is contained in RCW 50.20.050 (2)(b)(ii), and (viii) – (ix), but not in the remaining subsections of (2). This suggests that the legislature did not intend to impose an across-the-board requirement that claimants exhaust all reasonable alternatives to quitting.
(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050(2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary	As noted above, the reference to "substantial involuntary deterioration of the work" comes from what is now RCW 50.20.050 (1) (c) and that language is no longer contained in the statute. It is possible that the legislature viewed subsections (v) through (x) as

deterioration of the work.	representing changes that constitute a "substantial involuntary deterioration of the work." Nothing in the statute, however, provides a basis for thinking either that these subsections articulate the only situations that could constitute a "substantial involuntary deterioration of the work" or that a "substantial involuntary deterioration of the work" is necessary to constitute good cause.
(iii) **Other changes in working conditions.** Changes to your working conditions other than those included in RCW 50.20.050(2)(b)(v)-(x) will be evaluated under WAC 192-150-150 to determine if they constitute a refusal of an offer of new work.	The statute as interpreted by the court in *Spain* provides no justification for limiting good cause to the conditions enumerated in RCW 50.20.050(2)(b) as supplemented by the circumstances involving a refusal of an offer of new work as described in WAC 192-150-150. Many situations might constitute good cause, even a definition of good cause that is limited to "a substantial deterioration in the workplace" and yet not constitute a refusal of new work". The facts of the *Spain* case provide a good example. The workplace deteriorated – not for any of the reasons codified by the stand alone factors at (v) – (x) – and the deterioration was obviously not an offer of new work; the employer did not say "We understand the workplace has deteriorated, but those are the new conditions we are offering under which you will work." By defining good cause as limited to either the stand alone factors in RCW 50.20.050(2)(b) or offers of new work, the proposed emergency rule is inconsistent with the *Spain/Batey* decision that prompted the emergency rule.
(iv) **Unreasonable hardship.** Other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. "Unreasonable hardship" means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture,	As noted above, the definition of good cause should not be limited to work connected circumstances. Thus the phrase "work-connected" should be deleted in the first and fourth sentences.

and the reasons for leaving work must be significant. Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where: (A) Repeated behavior by your employer or co-workers creates an abusive working environment. (B) You show that your health or physical condition or the requirements of the job have changed so that your health would be adversely affected by continuing in that employment.	These examples seem reasonable, so long as they are accompanied by the existing proviso that the examples are not the only situations that may constitute good cause.
(2) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.	This section apparently codifies Division I's opinion in *Gaines v. ESD* in September 2007 and is a welcome addition.

Thanks once again for this opportunity to comment on the proposed emergency rule. I look forward to further participation as the process continues into August.

Sincerely,

Deborah Maranville
Director
Unemployment Compensation Clinic